surely it cannot be maintained that serious danger would result from intrusting this additional exercise of discretion to a man already occupying a post of such enormous trust.

INJUNCTIONS TO RESTRAIN FOREIGN PROCEEDINGS. — It is clear that a court of equity has jurisdiction to restrain a party from proceeding further with a foreign suit, since the decree operates on the person of the defendant and is not directed against the foreign court itself.[1] But while there is no direct interference with the functioning of the other tribunal, still considerations of interstate harmony and of proper respect due to another court competent to adjudicate the controversy, make the exercise of this jurisdiction a very delicate matter. Formerly, with the English and some American courts, these considerations controlled, and they refrained scrupulously from entertaining such jurisdiction in all cases.[2] Since then, courts have not hesitated to make free use of their power to enjoin, deeming it no violation of the principles of comity to interfere in cases, where to do otherwise would lead to grossly inequitable results. Instances are numerous, however, where interposition was a clear abuse of discretion, and where the foreign court, left unhampered, could have reached, in the end, a more desirable conclusion.

Practically all courts are agreed to-day that a multiplicity of suits, if vexatious, — and such is true in most instances — presents a fair case for the exercise of the Chancellor's discretion.[3] Consequently the defendant is required either to elect the forum most advantageous to his cause,[4] or to pursue his remedy only in the jurisdiction where he first instituted proceedings.[5] No one, it seems, can quarrel with the results in these cases; the defendant's conduct is clearly inequitable in putting the complainant to the expense and annoyance of defending several suits, and restricting him to a single action assures him sufficiently of the justice he seeks. The case is not so clear, however, where the action abroad is the only one pending, and this the complainant claims is vexatious. Mere additional expense and trouble in defending the suit should not warrant interference, since a party is not constrained to sue where it is most convenient for his opponent. He is entitled to any procedural advantage he can secure, and the court should not deny him the privilege unless he exercises it in a manner so unconscientious as to outweigh all other considerations. In the much-discussed case of *Kempson* v. *Kempson*,[6] the

[1] Portarlington *v.* Soulby, 3 Myl. & K. 104 (1834); Dehon *v.* Foster, 4 Allen (Mass.), 545 (1861); Cole *v.* Cunningham, 133 U. S. 107 (1889). In the last case it was held that an injunction of a foreign proceeding does not violate any provisions of the Federal Constitution.

[2] See Lowe *v.* Baker, 2 Freem. 125 (1677); Mead *v.* Merritt, 2 Paige (N. Y.), 402 (1831); Harris *v.* Pullman, 84 Ill. 20 (1876).

[3] See AMES, CASES ON EQUITY JURISDICTION, 28, note.

[4] White *v.* Caxton Bookbinding Co., 10 Civ. Pro. (N. Y.) 146 (1886).

[5] Monumental Saving Assoc. *v.* Fentress, 125 Fed. 812 (1903); Old Dominion Copper, etc. Co. *v.* Bigelow, 203 Mass. 159, 89 N. E. 193 (1909); Home Ins. Co. *v.* Howell, 24 N. J. Eq. 238 (1874). See also 26 HARV. L. REV. 347.

[6] 58 N. J. Eq. 94, 43 Atl. 97 (1899), where the husband of the complainant brought a suit for divorce in North Dakota, invoking the jurisdiction of the court by a fraudulent allegation of his residence in that state. See 15 HARV. L. REV. 145.

court granted an injunction, and properly so, since the facts disclosed not only hardship but also fraudulent conduct. In a recent Kentucky case, however, the injunction seems totally unwarranted, since it appears that the defense of the action abroad only occasioned slight additional expense and that the defendant sought only a more favorable forum.[7] Where the foreign suit is brought solely to harass the complainant, as after a complete adjudication of the matter in the home state, it is clear that it should be enjoined.[8]

Again, it is laid down as a general rule that foreign actions in evasion of the domestic law will be enjoined.[9] A citizen of a state often garnishes the wages of a fellow citizen in a sister state or attaches his property temporarily there, and brings suit solely to evade the domestic exemption laws. It is almost universally held, and with sufficient reason, that the suit may be restrained.[10] The local legislature, by statute, has outlined a strong policy of the state in assuring a citizen and his family of fair physical subsistence. To allow another citizen to defeat that policy by resorting to a mere procedural device is something that should not be countenanced by the courts of that state. Of course, this reasoning does not apply when a foreign creditor sues, even though the court can render an effective decree, since the creditor is under no duty to uphold the policy of any state other than his own.[11] Suits in evasion of the state insolvency laws have also been generally enjoined.[12] Here the state is interested in providing adequate machinery whereby an insolvent's property may be ratably apportioned among all his creditors. A single creditor, by attaching the debtor's property outside of the jurisdiction not only evades the operation of the statute and interferes with the insolvency proceedings, but seeks to gain for himself a highly inequitable advantage over the other creditors. The court therefore should entertain no scruples in restraining further action abroad. But whether there is just cause for such a decree before insolvency proceedings have been begun is doubtful, since the machinery of the statute has not yet been put into operation.[13] The whole question, however, has been of diminished importance since the passage of the Federal Bankruptcy Act; and to-day it will perhaps arise only in cases where the debtor's property is situated outside of the United States.

Protection of state policy, alone, justifies the injunction granted in the above class of cases. No such justification, nor any other, exists for enjoining suits brought merely in evasion of some common-law rule of reme-

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[7] Reed's Admr. *v.* Ill. Cent. R. R. Co. 206 S. W. (Ky.) 795 (1919).

[8] O'Haire *v.* Burns, 45 Colo. 432, 101 Pac. 755 (1909). It is true that the complainant could plead *res judicata* as a complete defense to the foreign action, but it would be unfair to require him to incur hardship in the defense of a purely vexatious suit.

[9] Miller *v.* Gittings, 85 Md. 601, 37 Atl. 372 (1897); Sandage *v.* Studabaker, 142 Ind. 148, 41 N. E. 380 (1895); AMES, CASES ON EQUITY JURISDICTION, 28, note.

[10] Wierse *v.* Thomas, 145 N. C. 261, 59 S. E. 58 (1907); Keyser *v.* Rice, 47 Md. 203 (1877); Snook *v.* Snetzer, 25 Ohio St. 516 (1886); Allen *v.* Buchanan, 97 Ala. 399, 11 So. 777 (1892).

[11] See Moor *v.* Anglo-Italian Bank, 10 Ch. D. 681 (1879); Reynolds *v.* Adden, 136 U. S. 348 (1889); Barry *v.* Mut. L. Ins. Co., 2 Thomp. & C. (N. Y.) 15 (1873).

[12] Cole *v.* Cunningham, *supra;* Dehon *v.* Foster, *supra;* Sercomb *v.* Catlin, 128 Ill. 556, 21 N. E. 606 (1889).

[13] See Cunningham *v.* Foster, 142 Mass. 47 (1886).

dial or of even substantive right. The state cannot properly be said to have a vital interest in having litigation between its citizens determined solely by the common law of the state. Mere disparity of remedies or difference of substantive law is an insufficient consideration for interfering with a case before a court which, it must be assumed, will make just disposition of the controversy. The balance of convenience is against enjoining, since there is no inequity in the defendant's merely seeking a more favorable forum. Some courts, however, are not in accord with this view and treat these cases no differently from those discussed above. Thus, a tort suit in Georgia was enjoined by an Alabama court on the ground that the Georgia court would refuse to apply the Alabama rule relative to contributory negligence and thereby deprive the complainant of a defense to which he was entitled.[14] In another case, the court improperly enjoined an action when it did not even appear that the defense of failure of consideration could not be set up as well before the foreign tribunal.[15] A recent case goes even further. In *Culp* v. *Butler* [16] an Illinois action was enjoined by the Indiana court, because the defense of the Statute of Limitations, which the complainant could plead in Indiana, would not avail him in Illinois.[17] The court obviously confuses barring the right with barring the remedy; the substantive right still subsists, but the domestic court simply refuses a remedy thereon. It is therefore difficult to perceive why the application to a forum that *will* grant the defendant a remedy constitutes an evasion of the home law, for admittedly there is a good cause of action. An Illinois decision is directly opposed to that of the principal case on the exact point discussed above,[18] and on the general principle involved, the weight of authority is also against it.[19] It is submitted, that the true rule in this class of cases should be that only suits prosecuted to evade a strong domestic policy should be restrained.

EFFECT OF FEDERAL POSSESSION AND CONTROL OF INSTRUMENTALITIES OF INTERSTATE COMMERCE ON THE POWER OF THE STATES. — Two recent decisions of the United States Supreme Court are interesting as new monuments on the vexed boundary line dividing federal from state power. In *Northern Pacific Ry. Co. et al.* v. *North Dakota*[1] the court held that under the war legislation of Congress [2] the Director General of

[14] Weaver *v.* Ala. G. S. R. Co., 76 So. (Ala.) 364 (1917).

[15] Sandage *v.* Studabaker, *supra*. See also Dinsmore *v.* Neresheimer, 32 Hun (N. Y.), 204 (1882).

[16] 122 N. E. (Ind.) 684 (1919).

[17] It is difficult to see how the facts in the case raised the question of law upon which the court bases its decision. Presumably the defendant brought his action, before the Statute of Limitations had run in either state. The complainant waited until the limitation period had run in Indiana and then filed his bill there to enjoin. Clearly, under no view was there an attempt to evade the Indiana law.

[18] Thorndike *v.* Thorndike, 142 Ill. 450, 32 N. E. 510 (1892).

[19] Edgell *v.* Clarke, 19 App. Div. 199, 45 N. Y. Supp. 979; Bigelow *v.* Old Dominion, etc. Co., 47 N. J. Eq. 457, 71 Atl. 153 (1908); Carson *v.* Dunham, 149 Mass. 521, 20 N. E. 312 (1889); Illinois Life Ins. Co. *v.* Prentiss, 277 Ill. 383, 115 N. E. 554 (1917); Am. Exp. Co. *v.* Fox, 187 S. W. (Tenn.) 1118 (1916); Federal Trust Co. *v.* Conklin, 87 N. J. Eq. 185, 99 Atl. 109 (1916); Wade *v.* Crump, 173 S. W. (Texas) 538 (1915).

[1] U. S. Sup. Ct. No. 976, October Term, 1918.

[2] 39 STAT. AT L. 645; 40 STAT. AT L. 451.